UNITED
NATIONS

AT

Administrative Tribunal

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22 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 746

Case No. 811: MUSEIBES

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 17 September 1994, Hasan Mohd Museibes, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application requesting the Tribunal, inter alia:

"6. Rescinding the false, manipulated ratings of [the] Field Education Officer, SAR [Syrian Arab Republic], and keeping and maintaining the true ratings of Area Education Officer, North.

7. Rescinding the subsequent letter of 'Deferral of Confirmation of Transfer' dated 28 Feb. 1993 ...

...

9. [Payment of] $10,000, ten thousand US dollars in compensation for the immense moral and psychosomatic effect and harm ever since this appeal up till now.

10. [Payment of] $2,000, two thousand US dollars in compensation for the fees of my legal consultants and related expenses.

11. Issuing and distributing fieldwide a letter of apology in English and Arabic to rehabilitate my reputation, and changing the unfair and harmful 'Certificate of Service' accordingly.

12. Reinstating me in my former post of Area Welfare Officer or any equivalent post, and considering the period of time ever since my resignation under duress as from 2 October 1993 until my reinstatement in a post as a 'Special Leave with full Pay'."

Whereas the Respondent filed his answer on 6 April 1995;

Whereas the Applicant filed written observations on 30 May 1995;

Whereas the Applicant submitted additional observations on 15 October 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 2 May 1987, as an Area Welfare Officer in the Aleppo/Latakia Area of Syria, at grade 7, step 1, on a temporary indefinite appointment. On 1 August 1990, the Applicant was transferred to the post of Area Welfare Officer, Central Homs Area, and on 4 May 1991, to the post of Clerk B, in the Relief and Social Services Department in the Field Office, Damascus, with protected grade and salary. On 1 February 1992, the Applicant was transferred back to the Aleppo Area as an Elementary Teacher, at grade 7. The Applicant resigned, with effect from 1 October 1993.

On 1 February 1993, the Applicant wrote to the Director of UNRWA Affairs, Syrian Arab Republic (SAR), requesting that he be transferred back to the position of Area Welfare Officer or an equivalent post, or that his appointment be terminated pursuant to staff rule 109.1.

On 2 February 1993, a periodic report was prepared, in view of the confirmation of the Applicant's transfer to the post of Elementary Teacher. The Field Education Officer, who signed the

report on 7 February 1993, noted that both signatories of the report, the Applicant's immediate and intermediate supervisors, had over-rated the Applicant. He recommended deferral of his confirmation in the post for three months. On 28 February 1993, the Field Personnel Officer, SAR, informed the Applicant of the decision to defer confirmation of his transfer to the post for three months.

On 15 March 1993, the Applicant wrote to the Director of UNRWA Affairs, SAR, noting the effort that had been undertaken to confirm him in the post of Elementary Teacher. He suggested that it was a "foregone conclusion" that his appointment would be terminated in three months "under cover of confirmation." He stated that the ratings discussed with him in February for his periodic report had been changed "without discussing them". He recalled his willingness to accept "termination through negotiation" pursuant to staff rule 109.1.

In a reply dated 22 March 1993, the Director of UNRWA Affairs, SAR, informed the Applicant, "I am unable to transfer you to the post of Area Welfare Officer or to an equivalent post." He noted that "it would be inappropriate for the Agency to terminate your appointment unless it has a valid reason for doing so". He suggested that termination could be discussed in the context of settlement negotiations of the Applicant's pending appeal.

On 15 April 1993, the Applicant lodged another appeal with the Joint Appeals Board (JAB), against the decision to defer his confirmation in the post. On 20 May 1993, the Field Personnel Officer, SAR, advised the Applicant that, "based on your periodic report which was completed for consideration of confirmation of transfer, your transfer to the post of Teacher is hereby confirmed." With effect from 1 October 1993, the Applicant resigned and separated from service.

On 12 July 1994, the JAB adopted its report. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

(a) The Board noted that the Administration's decision to defer the Appellant's confirmation of transfer to the post of Elementary Teacher, Grade 07, for a period of three months was entirely based on the fact that his performance was not satisfactory.

...

(c) In this context, the Board is of the opinion that Area Education Officer and the Area Officer are in a better position to evaluate the Appellant's performance.

...

(e) As for the Administration's submission that the Appellant's appeal is frivolous due to the fact that the Appellant had pointed out on several occasions that he does not wish to be confirmed in the post, the Board believes that what the Appellant had actually meant was that he wanted to be transferred back to the post of Area Welfare Officer; and, that the decision to defer confirmation of the Appellant's transfer which is the subject matter of this appeal could have led to the termination of the Appellant's services had he not received a second periodic report in June 1993 indicating satisfactory ratings of his performance.

IV. RECOMMENDATION

19. In view of the foregoing, the Board unanimously makes its recommendation that the confirmation of the Appellant in the post of Teacher 'C', Grade 07, should have taken place in March 1993, based on the Appellant's satisfactory performance as evaluated by his immediate and intermediate supervisors in the Period Report of March 1993."

On 19 August 1994, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him, inter alia:

"I note that the Board concluded that your immediate and intermediate supervisors, who rated your performance as satisfactory and above satisfactory in the evaluation report prepared to assess your suitability for confirmation in the teaching position, were in a better position to evaluate your performance than your principal supervisor, who recommended

deferment of confirmation in the appointment. Based on the foregoing, the Board unanimously made its recommendation that confirmation of your appointment should have taken place in March 1993, and by implication, without any period of deferment.

In the interest of bringing this matter to a final conclusion, I am prepared to accept the Board's recommendation. I have therefore issued instructions that your Agency records are to be amended to reflect confirmation of your appointment in the teaching position in March 1993, without any period of deferment."

On 17 September 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant never requested to be transferred from the post of Area Welfare Officer, which was the subject of his first appeal. All transfers since then have been disciplinary measures.

2. The "severe warning", which is the subject of the Applicant's second appeal, paved the way for the unfair deferral of confirmation of transfer.

Whereas the Respondent's principal contentions are:

1. The Applicant's alleged injury has been fully redressed and his claim, therefore, is moot.

2. The Applicant's contention that he should be transferred back to a Welfare Post was not considered by the JAB and is not properly before the Tribunal.

The Tribunal, having deliberated from 3 to 22 November 1995, now pronounces the following judgement:

I. The complaint now brought before the Tribunal by the Applicant is an offshoot of the events dealt with by the Tribunal in

Judgement No. 717, dated 28 July 1995. In that case, the Respondent informed the Applicant, on 10 January 1992, that a fair solution to the difficulties faced by the Applicant resulting from frequent transfers from place to place in 1990/1991 would be to move him from Damascus to Aleppo and to offer an ex gratia payment of 25,000 Syrian pounds. The Applicant was not satisfied by these measures but accepted with thanks his transfer to Aleppo, his home town. He did in fact move there in February 1992. He now complains that the Field Personnel Officer, SAR, sent a letter dated 28 February 1993, in which he stated that it had been "decided to defer confirmation of your transfer for a period of three months". The Applicant contends that this had the effect of depriving him of the opportunity for advancement, and was based on biased periodic reports which he did not have a chance to rebut. The Applicant argues that the action taken by the Respondent was not only in violation of existing Regulations and Rules but was based on malice and was the result of systematic manipulations against him by various persons in UNRWA, SAR. All this time, the Applicant continued to press for reinstatement to his post as Area Welfare Officer or an equivalent post.

II. The Respondent contends that the decision to delay confirmation of the Applicant's transfer to Aleppo was due entirely to his poor performance as a teacher, especially to his failure, on occasion, to prepare lessons for his students and that such a decision is entirely within the competence and discretion of the Respondent.

III. The Tribunal finds - as indeed is clear from several communications received from the Respondent - that the letter of 28 February 1993, from the Field Personnel Officer, marked "Private and Official" should not have referred to "deferral of confirmation of transfer" when the Applicant had in fact been physically

transferred to Aleppo about a year before. What was apparently meant was that his confirmation in the post of Elementary Teacher at Grade 7 should be postponed for three months, pending another report on his work at the expiry of this period.

The Tribunal has not been given any satisfactory explanation for this action by the Respondent except for his reference to a Personnel Directive, effective from 1 February 1993, almost a year after the Applicant had actually been transferred to Aleppo. This apart, the Tribunal is not at all convinced that the Directive, which is mainly concerned with probation, applied to the Applicant. For, in the words of the Officer-in-Charge, Headquarters (Vienna), in his letter of 10 January 1992, the Applicant was to be "transferred back to Aleppo to the temporary post of Elementary Teacher at Grade 7, with priority to be offered the first vacant post that comes up in that area (as an English Teacher, preparatory cycle, at Grade 9)". In the view of the Tribunal, the clear intention of such a decision was to appoint the Applicant in Grade 7 temporarily and to promote him to Grade 9, as soon as a suitable opportunity occurred. There was no indication that he was being to sent to Aleppo on probation, in February 1992.

IV. Furthermore, there is some indication that the decision of the Officer-in-Charge, Headquarters, was at variance with the kind of action contemplated by the Area Administration of UNRWA in Syria. In this connection, the Tribunal recalls the recommendations of the Periodic Review Committee on the Applicant in the process which led to his initial transfer from Aleppo, and which reflected the attitude of the Respondent that unless the Applicant improved his work and attitude significantly he might have to be separated from service.

V. The Applicant resigned from the Agency's service at the end of September 1993. The JAB examined all the documents and

recommended that the Applicant should have been confirmed in his post in March 1993. This recommendation was accepted and was given effect. Nevertheless, the Tribunal finds that, while the background of this case does not justify any conclusion of inherent bias or prejudice against the Applicant, he did nonetheless suffer much avoidable uncertainty and anguish, because of the way he was treated and particularly, the way he was subjected to a confirmation process for a post that was below his grade level and intended to be temporary until a more suitable post became available. For this, he is entitled to some monetary compensation which the Tribunal assesses at US$2,000.

VI. In view of the foregoing, the Tribunal:

(a) Orders the Respondent to pay the Applicant a sum of US$2,000.

(b) Rejects all other pleas.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 22 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary